

HIGH COURT FORM NO. (J)2

HEADING OF JUDGMENT IN ORIGINAL SUIT

DISTRICT:- TINSUKIA

IN THE ORIGINAL COURT OF THE CIVIL JUDGE, TINSUKIA

Present :- A. Khanal, A.J.S.

Friday, the 5th day of July, 2019

Money Suit No. 04 of 2018

Union Bank of India,

A Body Corporate constituted under the Banking Companies and Acquisition and Transfer of Undertaking Act, 1970 having its Head Office at 239, Vidhan Bhavan Marg Noriman Point Mumbai 400021 and having Branch Offices amongst others at Sookerating, Doomdooma in the District of Tinsukia, Assam represented by its Branch Manager of Sookerating Branch, Doomdooma, District-Tinsukia, Assam.

...Plaintiff.

-VERSUS-

1) Sri Hare Krishna Sha,

S/o. Sri Jagnath Sha,
A resident of Boarding Road,
Chaudhury Market,
P.O. & P.S. – Doomdooma,
District-Tinsukia, Assam

...Defendant.

This suit coming for final hearing on **05.07.2019** in presence of:-

Mr. T.K. Das

Ld. Advocate for the plaintiff.

None appeared

for the defendant.

And having stood for consideration to this day, the Court delivered the following Judgment:-



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J U D G M E N T

1. This is a suit for recovery of Rs.2,04,040.20 with future interest along with the cost of the suit and the suit is valued at Rs.2,04,040.20 and Court fee of Rs.3,597/- has been paid thereon.

The plaintiff's case in brief is as follows:-

2. That the plaintiff is a duly constituted Banking Concern having its Head Office at 239, Vidhan Bhavan Marg, Noriman Point, Mumbai- 400021 in the State of Maharashtra and amongst and amongst others having Branch Office at Sookerating, Doomdooma, Uchamati in the District of Tinsukia, Assam.

3. That the defendant is a businessman by profession having his residence at Boarding Road, Chaudhury Market, Doomdooma, P.O. & P.S. Doomdooma in the district of Tinsukia, Assam and his business location at near Don Bosco School P.O. Rupai via Doomdooma, District Tinsukia, Assam.

4. That the defendant made an application on 19.07.2013 before the plaintiff Bank seeking financial assistance of Rs.4,50,000/- as Term Loan for the purpose of improving and procuring stocks of scrap goods for running business and accordingly, the plaintiff Bank after processing the loan proposal has sanctioned on 19.07.2013 a Term Loan of Rs.4,50,000/- in favour of the defendant.

5. That the defendant in order to avail the said Term Loan facility on 20.07.2013 executed several security documents like, Demand Promissory Note, Letter of Hypothecation of goods agreement, etc. and his Life Insurance Policy was also submitted as security.

6. That the plaintiff Bank sanctioned the said loan amount and on 20.07.2013, a Term Loan Account No.450406130014090 and disbursed the said facility and credited it in the Savings Account No.450402010006089 of the defendant lying with the plaintiff Bank.



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7. That while sanctioning the said Term Loan amount stipulated certain terms and conditions amongst Others that the said Term Loan would be repayable in 59 EMI with a sum of Rs.13,500/- per month commencing from August, 2013 and accordingly the defendant accepted the said terms and conditions stipulated by the Bank.

8. That the defendant has not deposited the said EMI regularly in the aforesaid Term Loan Account of the defendant lying with the Bank and as a result the said Term Loan Account turned NPA asset for the plaintiff Bank on 31.03.2016 due to non-payment of regular monthly installments in repayment of the said Term Loan outstanding.

9. That the plaintiff Bank by exercising the right to set off appropriated the collateral security of Term Deposit and recalled the surrender value of the Life Insurance Policy, from the Life Insurance Corporation of India, Doomdooma and credited on 20.06.2015 the proceeds of Term Deposit amounting to Rs.52,701/- on 31.12.2015, Rs.26,864/- being the premature value of Term Deposit and also credited on 25.05.2016 Rs.43,716/- and on 09.06.2016 Rs.38,404/- the sums received from Life Insurance Corporation of India, Doomdooma Branch Office with due intimation to the defendant.

10. That while the defendant has been neglecting and failed to deposit the EMI regularly as per the terms and conditions the plaintiff Bank served several Notice to recover the overdue amount but the defendant has not paid any heed to the effect of such notices served on the defendant.

11. That after receiving the Notice from the plaintiff Bank, the defendant on 31.12.2015 visited the Bank and made assurances of repayment and also confirmed the Debit Balance of Rs.2,38,490/- on 31.12.2015. That while desired response has not been evoked from the side of the defendant in question of the said repayment, the plaintiff Bank

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served legal Notice dated 13.11.2017 through its Advocate with registered acknowledgement post and the same got acknowledged by the defendant.

12. That the defendant failed and neglected to comply with the requirement of the aforesaid Notice dated 13.11.2017 and further sum of Rs.2,04,040.20 only with interest charged up to 30.11.2017 remained outstanding as on 30.11.2017 in the plaintiff Bank.

13. Hence, the instant suit praying for the following reliefs:-

(a) Judgment and decree for Rs.2,04,040.20/- against the defendant with future interest @10% from the defendant being the date of filing of the suit till realization;

(b) Cost of the suit; and

(c) Any other relief/reliefs which the plaintiff be found entitled as per equity and justice.



Service of process:-

14. That on institution of the suit, summons was served upon the defendant and he appeared through his learned counsel and filed written statement but subsequently, at the stage of trial, he failed to appear and as such, the suit proceeded ex-parte against him.

Pleas taken by the defendant in his Written Statement:-

15. That the defendant in his written statement denied the case of the plaintiff and took some general pleas like, the suit not being maintainable, barred by law of limitation, waiver, estoppels and acquiescence, there being no cause of action, etc.

16. That the defendant also inter-alia denying the case of the plaintiff pleaded that he never made any application for obtaining loan from the plaintiff Bank on 19.07.2013 and has never executed any document in favour of the plaintiff Bank.

17. That the defendant never made any application for obtaining loan sanctioned by the plaintiff bank in favour of the defendant as such further procedure for procuring the loan does not arise.

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18. That the defendant never applied for loan so there was no default on the part of the defendant to repay the due amount, as alleged by the plaintiff and there is nothing due to be paid by the defendant to the plaintiff Bank with or without interest.

19. That the defendant has not applied for any loan before the plaintiff and as such, the defendant is not defaulter and he is not liable to repay any amount to the plaintiff Bank.

20. Hence, prayed for rejection of the plaint.



Issues framed in the suit :-

21. Upon consideration of the contents of pleadings and on hearing both the parties, the following issues were framed in the suit:-

- (I) Whether the suit is maintainable?**
- (II) Whether the defendant availed Term Loan of Rs.4,50,000/- (Rupees Four Lakhs Fifty Thousand) only from the plaintiff Bank on 19.07.2013?**
- (III) Whether the plaintiff is entitled to recovery of Rs.2,04,040.20 (Rupees Two Lakhs Four Thousand Forty and Twenty Paise) only along with future interest @ 10% p.a. from the defendant? and**
- (IV) Whether the plaintiff is entitled to relief/relieves as claimed for?**

Evidence adduced by the plaintiff side:-

22. That the plaintiff Bank submitted the evidence-on-affidavit (in chief) of Sri Bijoy Chakraborty, the Manager of the plaintiff Bank as PW1 and the earlier Manager of the plaintiff Bank Sri Mahananda Lagasu as PW2. The plaintiff side also marked and exhibited the Loan Application Form dated 19.07.2013 as Ext-1, wherein Ext-1(a) is the signature of the defendant in Ext.1; Sanction Advice as Ext-2, wherein Ext-2(a) is the signature of the PW2 in Ext.2; Terms and Conditions as Ext-3; Demand Promissory Note dated 20.07.2013 as Ext-4,

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wherein Ext-4(a) is the signature of the defendant in Ext.4; Hypothecation (goods) agreement dated 20.07.2013 as Ext-5, wherein Ext.-5(a) to Ext.-5(d) are the signatures of defendant in Ext.5; Agreement for pledge of Securities as Ext-6, wherein Ext-6(a) is the signature of defendant in Ext.6; Notices dated 01.06.2015, 02.12.2015, 18.02.2016, 08.03.2016 served by the Manager of the plaintiff Bank as Ext-7 to Ext.-10, wherein Ext. Nos.-7(a), 8(a), 9(a) and 10(a) are the signatures of the Manager of the plaintiff Bank in Ext.7 to Ext.10; Debit Balance Confirmation dated 31.12.2015 executed by the defendant as Ext-11, wherein Ext-11(a) is the signature of defendant in Ext.11; Demand/Legal Notice dated 13.11.2017 as Ext-12, wherein Ext-12(a) & Ext.-12(b) are the signatures of Advocate in Ext.12; Acknowledgement Card as Ext-13; Computerized copy of Statement of Account as Ext.14, wherein Ext-14(a) to Ext.14(d) are the Seal and Signatures of the Manager of the plaintiff Bank in Ext.14; and Certificate issued by the Manager with regard to the Statement of Account (Ext.14) as Ext-15, wherein Ext-15(a) is the Seal and Signature of the Manager of the plaintiff Bank in Ext.15.



Discussion, Decision and Reasons thereof:-

23. Now, considering the ex parte argument of the plaintiff side and having perused the case record, my discussions and decision with reasons thereof are as follows:-

24. Now, the plaintiff Bank through the un-rebutted testimony of PW1 and PW2 and exhibited documents, like loan application form (Ext.1), the sanction of advice (Ext.2) as well as other documents could prove the fact that a Term Loan of Rs.4,50,000/- was sanctioned by the plaintiff Bank in favour of the defendant for the purpose of improving the business of the defendant and the said sanctioned amount was repayable by the defendant in 59 EMIs @ Rs.13,500/- per month w.e.f. August, 2013.

25. It is also proved by the plaintiff Bank through the un-rebutted testimony of PW1 and PW2 along with the exhibited documents, including the statement of loan account of the defendant (Ext.14) that a loan Account No. 450406130014090 was opened in the name of the defendant with regard to the said loan advanced to him and the said account turned NPA on 31.03.2016 and

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now (as found from Ext.14), that the total outstanding dues is around Rs.2,04,040.20/- as on 30.11.2017 payable by the defendant to the plaintiff Bank.

26. It is also found from the un-rebutted testimony of PW1 and PW2 and the documents exhibited that some amount of loan though has been repaid by the defendant to the plaintiff Bank and the security has also been adjusted against the said loan account but still the said outstanding dues of Rs.2,04,040.20/- are required to be payable by the defendant to the plaintiff Bank.



27. Now, though the defendant took the plea that he never took any loan from the plaintiff Bank nor executed any document in favour of the plaintiff Bank but his said plea stands not proved in light of the fact that he failed to adduce any evidence in this regard as onus was on him to do so, rather on the other hand, the defendant failed to contest the suit and cross-examine the PWs and the testimony of the PWs remained unrebutted and as found above from their unrebutted testimonies and the documents marked and exhibited by them and proved by them, the plaintiff side extended loan to the defendant and the defendant obtained loan by executing documents in favour of the plaintiff Bank but failed to repay the entire loan amount and an outstanding amount of Rs.2,04,040.20 is still payable by the defendant to the plaintiff Bank.

28. Hence, from the above discussions, it is found that the plaintiff Bank could prove that they are entitled to recover the said outstanding dues totalling to Rs.2,04,040.20/- till 30.11.2017 and thereafter, they are also entitled to recover future interest @ 10% p.a. w.e.f. 01.12.2017 till the realization from the defendant.

29. Furthermore, since the plaintiff Bank being a public sector Bank and as public money is also involved, they are also entitled to recover the cost of the suit from the defendant.

30. In addition to the above, it is also found that the instant suit is filed within the period of limitation and the plaintiff Bank is thus entitled to the reliefs and the suit needs to be decreed.

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ORDER

31. Now, considering the above discussions and decisions arrived in the foregoing paragraphs, the suit is accordingly decreed ex parte and the plaintiff is granted the following reliefs:-

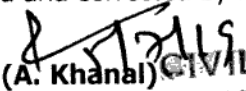
- (i) A decree for recovery of Rs.2,04,040.20 with future interest @ 10% p.a. w.e.f. 01.12.2017 till final realization of the decretal amount from the defendant; and
- (ii) Also, cost of the suit is granted to the plaintiff Bank to be payable/recoverable from the defendant.



32. Prepare a decree accordingly within a period of one week.

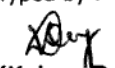
33. Pronounced by me on this open Court, this 5th day of July, 2019 (Friday) under my hand and seal of this Court.

Dictated and corrected by me:-


(A. Khanal) CIVIL JUDGE
TINSUKIA ASSAM
Civil Judge, Tinsukia


(A. Khanal) CIVIL JUDGE
TINSUKIA ASSAM
Civil Judge, Tinsukia

Typed by :-


(Kalyan Dey)
Stenographer

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APPENDIX**A. Plaintiff's Witness:-**

P.W.1- Sri Bijoy Chakraborty (Manager of the Plaintiff Bank); and
P.W.2- Sri Mahananda Lagasu (Earlier Manager of the Plaintiff Bank).

B. Defendant's Witness:-

NIL.


C. Plaintiff's Exhibits:-

Ext-1: Loan Application form dated 19.07.2013;
Ext-1(a): Signature of the defendant in Ext.1;
Ext-2: Sanction Advice;
Ext-2(a): Signature of the PW2 in Ext.2;
Ext-3: Terms and Conditions;
Ext-4: Demand Promissory Note dated 20.07.2013;
Ext-4(a): Signature of defendant in Ext.4;
Ext-5: Hypothecation (goods) agreement dated 20.07.2013;
Ext.-5(a) to Ext.-5(d): Signatures of defendant in Ext.5;
Ext-6: Agreement for pledge of Securities;
Ext-6(a): Signature of defendant in Ext.6;
Ext-7 to Ext.-10: Notices dated 01.06.2015, 02.12.2015, 18.02.2016, 08.03.2016 served by the Manager of the plaintiff Bank;
Ext. Nos.-7(a), 8(a), 9(a) and 10(a) : Signatures of the Manager of the plaintiff Bank in Ext.7 to Ext.10;
Ext-11: Debit Balance Confirmation dated 31.12.2015 executed by the defendant;
Ext-11(a): Signature of defendant in Ext.11;
Ext-12: Demand/Legal Notice dated 13.11.2017;
Ext-12(a) & Ext.-12(b): Signatures of Advocate in Ext.12;
Ext-13: Acknowledgement Card;
Ext-14: Computerized copy of Statement of Account;
Ext-14(a) to Ext.14(d): Seal and Signatures of the Manager of the plaintiff Bank in Ext.14;
Ext-15: Certificate issued by the Manager with regard to the Statement of Account (Ext.14); and
Ext-15(a): Seal and Signature of the Manager of the plaintiff Bank in Ext.15.

D. Defendant's Exhibits:-

NIL

Dictated and corrected by me:-


(A. Khanal)
CIVIL JUDGE
Civil Judge, Tinsukia
TINSUKIA ASSAM


(A. Khanal)
CIVIL JUDGE
Civil Judge, Tinsukia
TINSUKIA ASSAM

Typed by :-


(Kalyan Dey)
Stenographer

